IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7986 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
AKBALSING RAMESHWARSING - Respondent(s)

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Appearance :

MR IM PANDYA, ASSTT.GOVERNMENT PLEADER for Petitioner(s) : 1,
MR UT MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/08/2007

ORAL JUDGMENT

Shri I.M. Pandya, learned Assistant Government Pleader for the petitioner-State; Shri U.T. Mishra, learned counsel for the respondent.

2. The petitioner-State being aggrieved by the order dated 10.2.99, passed by the Labour Judge, Ahmedabad, in Recovery Application No. 1962 of 1987 is before this Court under Article 227 of the Constitution, with a submission that in absence of a pre-adjudicated right or admitted right, the Labour Court had no jurisdiction to proceed with the recovery application and direct recovery against the petitioner.

3. It is to be noted that the State Government, was undisputedly not a party before the Labour Court, the only party before the Labour Court was Director, ESI Corporation. However, present petition came to be filed by the State Government through the Director of ESI Corporation.

4. The petition, at the instance of the State Government would not be maintainable but however, I will take it to be a petition for and on behalf of the Director of ESI Corporation.

5. The workman came to the Labour Court with a submission that he had worked for 12 hours a day and as he had worked overtime, in accordance with the service conditions and the Rules, he was entitled to overtime and as the same has not been paid to him, a direction for payment be issued.

6. The petitioner appeared before the Labour Court and submitted that the original applicant/workman was an employee of the State Government, therefore, he was governed by the Bombay Civil Services Rules. They also submitted that the provisions of the Industrial Disputes Act, Employees State Insurance and Miscellaneous Provisions Act would not apply, Payment of Wages Act or Minimum Wages Act would also be not applicable.

7. The workman stepped into the witness box and submitted that he was entitled to the overtime. ESI Corporation examined a witness, who made a candid admission in the cross-examination and clearly admitted that the workman had worked for 12 hours a day, he was entitled to the payment

for overtime and as the same was required to be paid to him, he was justified in filing recovery application. Relying upon the said admissions made by the witness, the Court below ordered the present petitioner to pay a sum of Rs. 40,950/- as amount for overtime work.

8. Shri I.M. Pandya, learned AGP for the petitioner, in the present matter submitted that though a plea was raised before the Labour Court that the respondent was a government servant but in view of Section 17 of the ESI Act, he could not be taken to be a government servant and as such, Bombay Civil Services Rules would not apply. He further submitted that unless there was a pre-adjudicated right or there was an admitted right, the workman had no right to come to the Labour Court under Section 33C[2] of the Industrial Disputes Act. In the opinion of this Court, this argument cannot be allowed to stand. True it is that the proceedings under Section 33C[2] are in nature of execution application and filing of an application must stand on the foundation of a pre-adjudicated or pre-admitted

right but such rule would not apply to a case where a party – non applicant appears before the Court and admits the entire claim made by the workman. The above referred Rule would apply to a case where a party-non applicant appears and submits that they were raising a factual dispute, therefore, the Court would have no jurisdiction to direct recovery under Section 33C[2] of the Industrial Disputes Act. In the present case, the witness examined by the ESI Corporation stated before the Court that the workman had worked for 12 hours a day, he had worked overtime, he was not paid any money for overtime work. If these are the admissions, then, the party-non applicant cannot be allowed to say that as they are raising some dispute though they are admitting the claim, the Court would have no jurisdiction.

9. In the opinion of this Court, the Court below was absolutely justified in granting the application.

10. I find no reason to interfere. The petition is dismissed with costs of Rs. 5,000/- [Rupees Five

Thousand only]. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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